

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date: 27th July 1996.

CRIMINAL APPEAL No. 547 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJ

Versus

GHUDJI VARSANGJI DEVDA & 2 OTHERS

Appearance:

Shri S.T. Mehta, APP for the Appellant.

Ms.Kusum M. Shah Advocate for Respondents Nos.1, 2,& 3.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 27/07/96

ORAL JUDGEMENT

The appeal has been directed, against the judgment dated 21st April 1989, delivered by the then learned Judicial Magistrate (First Class), Dhanera in Criminal Case No. 67 of 1989 on his file, acquitting the respondent of the offence under Section 394 read with Sec. 114 of the Indian Penal Code.

2. The facts giving rise to the present appeal may in brief be stated. Shamtaji Okhaji and his wife,

Lasiben are residing at Gola in the district of Banaskantha. Formerly Shamtaji was the servant of Dharmaji. Later on they were staying together under the same roof. Jethiben the wife of Dharamji was also residing in the same house. On 27th November 1986 at 7.00 p.m. all the three respondents went to Shamtaji by a tractor. They parked the tractor in front of the house of Shamtaji and entered into the house. At that time Shamtaji was taking his supper. Jethiben the wife of Dharmaji was preparing cake (Roti) while Lasiben the wife of Shamtaji was helping. The respondents demanded the amount for grain and papad. Shamtaji refused to pay. Therefore they demanded the amount for liquor. On being denied, they insisted for the amount which Shamtaji was to pay on the occasion of Diwali. But he also refused to pay and therefore they demanded the amount for the goat. Shamtaji did not budge any inch. Hence the respondents caught hold the neck of Shamtaji and putting him to imminent danger of hurt and death, they forcibly thrusting the hand into his jacket-pocket took away Rs.504/-. During this scuffle all the three respondents also voluntarily caused hurt to Shamtaji by kick and fist blows. Mohan Harijan, Hilchand Chavda rescued Shamtaji and Mithabhai and Mafabhai, who rushed to the scene of offence hearing the shouts, caused the respondents to leave the place after persuasion. By the time it was 11.00 p.m. Thereafter on the next day before the police at Dhanera a complaint was lodged. After the investigation was over a chargesheet before the lower court was presented. The learned Judge recorded the plea of the respondents who in turn pleaded not guilty. The prosecution led necessary evidence. Appreciating the evidence on record, the learned Judge found that prosecution had failed to establish the charge beyond reasonable doubt. He therefore acquitted the respondents. Being aggrieved by the judgment and order of acquittal passed by the learned Magistrate, present appeal has been preferred before this Court.

3. On behalf of the appellant State, the judgment and order of the lower Court are assailed submitting that the learned Judge was not right in rejecting the testimony of the witnesses examined on behalf of the prosecution. All the witnesses were consistent and were not shaken in the cross-examination. Their testimony was unimpeachable, and when their testimony was credible, the learned Judge ought to have relied upon the same. Without any good reasons the learned Magistrate discarded the evidence.

4. Of course, Dr. Babulal Jethalal examined at Exh.

31 supports the case of the prosecution so far as it relates to the case of injury mentioning that he found swelling on the back, and right ankle. He also could see tenderness on the chest and left ankle, but on that evidence alone one cannot jump to the conclusion that incident as alleged had happened and the respondents committed the alleged wrong.

5. In order to determine whether the incident really happened and the respondents did the wrong, I have to look to the direct evidence namely the evidence of Shamtaji Okhaji and the evidence of the eye witnesses. Shamtaji Okhaji (Exh. 7) has no doubt made the statements supporting the case of the prosecution, but his evidence cannot be accepted without any corroboration for the simple reason that in connection with the field and tractor as well as the business he is having inimical terms with the respondents. It also transpires that because of the inimical terms he tried to rope in the respondents. According to him, the respondents went to his house at 7.00 p.m. and they remained there upto 11.00 p.m. For about 4 hours the respondents remained in his house and created the uproar and also assaulted and beat him. Not only that, they also tried to extort money by threat and other forcible devices. This say does not appeal to reason, because if the incident had continued for about 4 hours, certainly from the neighbourhood some one would have come and would have tried to see that normalcy was restored. If no one goes there for such a long period, it is a circumstance on record which casts a serious doubt on the testimony of this witness. As this is the case, I must see whether there is any corroborative and convincing evidence.

6. Lasiben Shamtaji is examined at Exh. 20. She has also supported the case, but from her evidence as well as the evidence of the Investigating Officer (Exh. 36), it is clear that she did not see any of the respondents taking out the amount of Rs.504/- from the jacket-pocket of Shamtaji. She only knew after Shamtaji informed her. She had also veiled over her face and therefore it was not possible for her to see clearly. However she has made the improvement and has come out with the say as if she witnessed the incident. In fact, it appears that she gathered the information from her husband Shamtaji which shows that she might not be present at that time, and it might be because at that time Jethiben was preparing the cake in the kitchen and was serving too. The evidence of Lasiben can therefore be said to be incredible.

7. Nanaram Jodhaji (Exh.23) also supports initially the case of the prosecution, but before police, as made clear by the Investigating Officer, he has not stated the facts about the incident he saw. There is therefore a reason to believe that he was got up for the purpose of corroboration.

8. Mafa Mota (Exh.35), according to the prosecution, rushed to the scene of offence hearing the shouts and he rescued Shamtaji. But according to this witness he has not entered into the kitchen, and according to the Investigating Officer he did not state before him, when his statement was recorded; that he saw the incident and also saw the respondent forcibly taking out the amount from the pocket of the respondent Shamtaji. He also made it clear before the police that he gathered the information about the incident from Shamtaji. It can, therefore, be said that he is not the eye witness. Still however alike others he also deposed before the Court as if he was the eye witness. He can, therefore, be said to be the got up witness. His evidence, therefore, cannot be relied upon without any corroboration. There is no other evidence which can help the prosecution. Rest of the witnesses have turned hostile and have not at all supported the case of the prosecution.

9. True, the abovestated witnesses have supported each other, but that cannot help the prosecution. For the reasons stated hereinabove, the evidence of every one is not reliable. It suffers from inherent improbabilities, and they have, making necessary improvements, made the statement suitable to the case of the prosecution, and therefore one in-firm if supports the same brand, it is in law no corroboration. It cannot, therefore, be said that the injured Shamtaji finds corroboration and the evidence on record is trustworthy, reliable and convincingly cogent. The learned Judicial Magistrate was, therefore, perfectly right in discarding the evidence led by the prosecution, and giving benefit of doubt to the present respondents. For the abovesaid reasons, I see no justifiable reason to upset the findings of the learned Magistrate and convict the respondents as urged before me. The appeal is devoid of merits and requires to be rejected. In the result, the appeal is hereby dismissed, and the order of acquittal is maintained.

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TRUE COPY

R.M. RAVINDRAN

P.S. to Hon'ble Judge,

High Court of Gujarat
Ahmedabad